

In the Matter Of:

LTL Management LLC Bankruptcy

ADAM LISMAN

May 31, 2023



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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW JERSEY

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In Re:

LTL MANAGEMENT, LLC,

Debtor.

Case No. 21-30589 (MBK)

-----X

VIDEOTAPED DEPOSITION OF ADAM LISMAN

DATE: May 31, 2023

TIME: 9:34 a.m.

PLACE: ***REMOTE***

BEFORE: Rebecca Schaumloffel, RPR, CCR-NJ

JOB NO: 2023-898649

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(Appearances:)

GENOVA BURNS, LLC

494 Broad Street

Newark, New Jersey 07102

BY: DANIEL M. STOLZ, ESQ.

JONES DAY

Attorneys for the Debtor

250 Vesey Street

Suite 31

New York, New York 10281

BY: GEOFF GOTTBRECHT, ESQ.

DAVID S. TORBORG, ESQ.

KARST & VON OISTE, LLP

23923 GOSLING ROAD SUITE A

Spring, Texas 77389

BY: DOUGLAS VON OISTE, ESQ.

MASSEY & GAIL, LLP

2000 Maine Avenue SW

Washington, D.C. 20024

BY: RACHEL MORSE, ESQ.

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A P P E A R A N C E S:

ASHCRAFT & GEREL, LLP

Attorneys for Rebecca Love

120 E. Baltimore Street

Suite 1802

Baltimore, Maryland 21202

BY: JAMES F. GREEN, ESQ.

MICHELLE PARFITT, ESQ.

BEASLEY ALLEN LAW FIRM

218 COMMERCE STREET

Montgomery, Alabama 36104

BY: LEIGH O'DELL, ESQ.

BROWN RUDNICK

Attorneys for the Talc claimants

7 Times Square

New York, New York 10036

BY: DAVID WEINSTEIN, ESQ.

JEFF JONAS, ESQ.

LYDELL BENSON, ESQ.

ALEX KASNETZ, ESQ.

GERARD CICERO, ESQ.

MICHAEL REINING, ESQ.

SUNNI BEVILLE, ESQ.

SUSAN SIEGER-GRIMM, ESQ.

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Appearances (continued:)

MAUNE RAICHLE HARTLEY FRENCH & MUDD, LLC

Attorneys for Katherine Tolleson,

et al.

777 S Harbour Island Blvd.

Suite 310

Tampa, Florida 33602

BY: CLAY THOMPSON, ESQ.

MILLER THOMSON LLP

10155 102 Street

Edmonton, Alberta, Canada

T5J 4G8

BY: JEFF CARHART, ESQ.

OFFICE OF THE UNITED STATES TRUSTEE

Attorneys for the United States

Department of Justice

One Newark Center

Suite 2100

Newark, New Jersey 07102

BY: LAUREN BIELSKIE, ESQ.

LINDA RICHENDERFER, ESQ.

JEFFREY SPONDER, ESQ.

<p style="text-align: right;">Page 93</p> <p>1 A. LISMAN</p> <p>2 concerns HoldCo's liquidity and ability to</p> <p>3 meet its obligations under the 2023 Funding</p> <p>4 Agreement and the Support Agreement.</p> <p>5 And that included -- in the second</p> <p>6 part of that topic was any tax, regulatory,</p> <p>7 or other impediments or constraints to</p> <p>8 obtaining funds to meet its obligations under</p> <p>9 the 2023 Funding Agreement.</p> <p>10 You are designated on that topic</p> <p>11 today, are you not, sir?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And in preparing to testify</p> <p>14 today on the tax and regulatory restraints</p> <p>15 that are referenced in that topic, did you</p> <p>16 educate yourself with respect to the</p> <p>17 \$1.8 billion dividend that we have been</p> <p>18 talking about?</p> <p>19 A. I have, based upon the information</p> <p>20 that I've already said.</p> <p>21 Q. Okay. And this document wasn't</p> <p>22 among the information that you reviewed in</p> <p>23 preparing for that topic; is that right?</p> <p>24 A. Correct. I have not seen this</p> <p>25 document until now.</p>	<p style="text-align: right;">Page 95</p> <p>1 A. LISMAN</p> <p>2 talk about the dividend, why it wasn't</p> <p>3 issued. Any questions about</p> <p>4 historical dividends. He is fully</p> <p>5 prepared for that.</p> <p>6 Just the fact that he does not</p> <p>7 necessarily know the technical aspects</p> <p>8 of different documents does not</p> <p>9 necessarily mean he is not prepared to</p> <p>10 deal with the topic.</p> <p>11 So I would encourage you to</p> <p>12 please ask questions about the topic</p> <p>13 the witness is prepared to answer.</p> <p>14 MR. MOXLEY: Mr. Starner, I</p> <p>15 fully intend to continue asking</p> <p>16 Mr. Lisman questions about the</p> <p>17 dividend. What I'm flagging for you</p> <p>18 is that this is a -- this is a bible</p> <p>19 of documentation with respect to the</p> <p>20 steps that were taken with respect to</p> <p>21 the dividend, that the witness is</p> <p>22 unfamiliar with.</p> <p>23 We will see how the testimony</p> <p>24 goes, but it's very meaningful -- it's</p> <p>25 very meaningful that this witness is</p>
<p style="text-align: right;">Page 94</p> <p>1 A. LISMAN</p> <p>2 Q. Okay.</p> <p>3 MR. MOXLEY: Okay. So,</p> <p>4 Mr. Starner, we may need to revisit</p> <p>5 whether there is a person that can</p> <p>6 speak to that topic based on the</p> <p>7 documentation that was produced to us</p> <p>8 in connection with this dividend. We</p> <p>9 will take that up --</p> <p>10 MR. STARNER: Mr. Moxley, please</p> <p>11 ask the questions -- those topics,</p> <p>12 therefore, he can address them. You</p> <p>13 should ask questions about -- he is --</p> <p>14 MR. MOXLEY: I'll ask the</p> <p>15 question again, Mr. Starner, so the</p> <p>16 record is clear.</p> <p>17 BY MR. MOXLEY:</p> <p>18 Q. Mr. Lisman, are you familiar with</p> <p>19 step number 1 that's identified on this</p> <p>20 document?</p> <p>21 MR. STARNER: And, Mr. Moxley, I</p> <p>22 think you've already asked those</p> <p>23 questions. I think ask this witness,</p> <p>24 generally speaking, about the</p> <p>25 dividend. He is fully prepared to</p>	<p style="text-align: right;">Page 96</p> <p>1 A. LISMAN</p> <p>2 not familiar with these documents in</p> <p>3 connection with that topic.</p> <p>4 We will address it offline if we</p> <p>5 need to.</p> <p>6 BY MR. MOXLEY:</p> <p>7 Q. Mr. Lisman, are you aware of the</p> <p>8 status of the \$1.8 billion dividend today?</p> <p>9 A. Yes. I'm aware it's remaining</p> <p>10 with the Apsis company in France.</p> <p>11 Q. Okay. Are approvals for -- are</p> <p>12 approvals internal at Johnson & Johnson</p> <p>13 currently being sought to transfer that</p> <p>14 dividend?</p> <p>15 A. Not that I'm aware of, no. The</p> <p>16 dividend remains with the company in France</p> <p>17 for the reasons I've said. There weren't</p> <p>18 adequate reserves there.</p> <p>19 Q. Does Johnson & Johnson have the</p> <p>20 ability to capitalize Apsis such that it</p> <p>21 would have adequate reserves to make this</p> <p>22 dividend if it chose to?</p> <p>23 MR. STARNER: Objection.</p> <p>24 Q. You can answer.</p> <p>25 A. That's a hypothetical question. I</p>

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1 A. LISMAN

2 would need to understand lots of facts and

3 reasons and amounts around doing that.

4 **Q. Does Johnson & Johnson have**

5 **\$2 billion in cash that it could transfer to**

6 **Apsis if it chose to?**

7 MR. STARNER: Objection.

8 A. Johnson & Johnson has cash.

9 Whether it can be transferred to another

10 entity or not is a different discussion and I

11 would, again, need to understand the facts

12 and reasons behind it and make sure it's a

13 wise financial decision.

14 **Q. Where does the div- -- so let me**

15 **make sure I understand, Mr. Lisman.**

16 **Where does the dividend currently**

17 **sit?**

18 A. From my understanding, it's

19 sitting with the Apsis company in France.

20 **Q. Okay. So it did not go to Johnson**

21 **& Johnson, the parent company, correct?**

22 A. From my understanding, no. It is,

23 quote, unquote, "stuck" with the Apsis

24 entity.

25 **Q. And in that status of being stuck**

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1 A. LISMAN

2 **with the Apsis entity, does HoldCo have**

3 **access to it?**

4 A. As far as a liquid asset, no,

5 because it hasn't made it back from France

6 into HoldCo.

7 **Q. Are you able to describe for me**

8 **the process to determine the size of the**

9 **dividends that originated with GH Biotech?**

10 A. I'm not aware of the detailed

11 process and calculating the exact number of,

12 I think it was 1.8 billion. I'm not aware of

13 the exact process behind that.

14 **Q. Okay. Are you aware of how**

15 **dividend strategy is set for GH Biotech?**

16 A. I'm aware of the general dividend

17 strategy for J&J as a whole, which would

18 include all of our entities.

19 **Q. What can you tell me about that,**

20 **sir?**

21 A. It is part of our ongoing

22 evaluation for cash needs, both inside the

23 U.S. and outside the U.S., to fund different

24 operations, tax liabilities.

25 There is an ongoing process to

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1 A. LISMAN

2 determine what the ultimate cash needs are

3 is, kind of, step one. And then step two is

4 what is the most capital, tax efficient,

5 regulatory, legal, foreign exchange process

6 to make that happen. So we evaluate a

7 multitude of factors on an ongoing basis.

8 **Q. Okay. So in making that multitude**

9 **of factors evaluation in a given scenario,**

10 **let's say HoldCo had a need to have access to**

11 **that dividend.**

12 **Steps could be taken under that**

13 **process that you have just outlined to -- to**

14 **capitalize Apsis such that it could -- it**

15 **could transfer that dividend or make that**

16 **dividend.**

17 **Is that fair?**

18 MR. STARNER: Objection. Calls

19 for speculation.

20 A. Again, that's a hypothetical. We

21 would need to evaluate what HoldCo's need is.

22 Dividends are approved through the corporate

23 parent. So we would look at how much, why is

24 it needed, how could it be repaid, before

25 doing anything. We --

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1 A. LISMAN

2 THE COURT REPORTER: I lost the

3 witness.

4 **Q. Yeah, you broke up for a second**

5 **there.**

6 **Did you say you would have to**

7 **evaluate all those factors; is that what you**

8 **said?**

9 A. Yeah. Sorry. Yes, we would have

10 to evaluate all of those factors, currency,

11 tax withholdings, how much it was, when could

12 it be repaid, what are the other needs of

13 cash in the business. There is over 500

14 entities at J&J all competing for access. We

15 would need to evaluate all of it.

16 **Q. What does Apsis do besides own**

17 **this 36.1 percent stake in GH Biotech; does**

18 **it do anything else?**

19 A. I don't know. I believe they are

20 a holding company, as I said before.

21 **Q. Does Apsis have the ability to**

22 **lend money to HoldCo?**

23 A. I'm not aware of that.

24 **Q. Okay. Taking, I think, one of**

25 **your last answers said that you would take**

<p style="text-align: right;">Page 101</p> <p>1 A. LISMAN</p> <p>2 into account what HoldCo's needs were in</p> <p>3 terms of needing to access the dividend.</p> <p>4 You referenced that, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. If one of its needs was a</p> <p>7 contractual obligation to make a payment and</p> <p>8 it needed to access this dividend to do that,</p> <p>9 a valuation would be undertaken, appropriate</p> <p>10 approvals could be obtained. But at the end</p> <p>11 of the day, if the evaluation was that that</p> <p>12 money should make its way to HoldCo, the</p> <p>13 money could make its way to HoldCo; is that</p> <p>14 correct?</p> <p>15 MR. STARNER: Objection.</p> <p>16 A. Again, the dividend is stuck with</p> <p>17 Apsis and not with HoldCo because there were</p> <p>18 not adequate reserves in Apsis to pass it</p> <p>19 back up to HoldCo.</p> <p>20 Whether J&J, as the parent</p> <p>21 company, evaluated it still wanted to is</p> <p>22 irrelevant. If there are local regulatory</p> <p>23 requirements that couldn't be met to pass the</p> <p>24 dividend on, there is nothing J&J can do</p> <p>25 about that. Those are facts.</p>	<p style="text-align: right;">Page 103</p> <p>1 A. LISMAN</p> <p>2 question is a little bit different. And I'm</p> <p>3 not trying to be difficult with you.</p> <p>4 A. Yes.</p> <p>5 Q. I fully appreciate your response</p> <p>6 there. Let me just ask the next question.</p> <p>7 The next question is, then:</p> <p>8 Assume with me for the purposes of this</p> <p>9 question that evaluation has taken place and</p> <p>10 that the parent company has determined that</p> <p>11 it is -- it is appropriate to capitalize</p> <p>12 Apsis so that that dividend can be released</p> <p>13 and HoldCo can have access to that</p> <p>14 \$1.8 billion. Assume with me that that</p> <p>15 evaluation has taken place and the decision</p> <p>16 has been made.</p> <p>17 Is there any, external to J&J,</p> <p>18 reason why J&J couldn't take whatever</p> <p>19 internal steps it needed to, to allow for</p> <p>20 HoldCo to have access to that \$1.8 billion?</p> <p>21 MR. STARNER: Objection. Calls</p> <p>22 for speculation. Incomplete</p> <p>23 hypothetical.</p> <p>24 Q. You can answer the question.</p> <p>25 A. If all of those things were done</p>
<p style="text-align: right;">Page 102</p> <p>1 A. LISMAN</p> <p>2 Q. Well, that's my question, I guess,</p> <p>3 Mr. Lisman, is, when you say, "there is</p> <p>4 nothing J&J can do about that," is there</p> <p>5 something that is a governmental or</p> <p>6 regulatory impediment to J&J capitalizing</p> <p>7 Apsis if it needed to in order to allow Apsis</p> <p>8 to have enough on reserve under applicable to</p> <p>9 law to Apsis such that it could make that</p> <p>10 dividend?</p> <p>11 MR. STARNER: Objection. To be</p> <p>12 clear, when you say "J&J," are you</p> <p>13 talking about J&J the parent?</p> <p>14 MR. MOXLEY: I am.</p> <p>15 MR. STARNER: Okay.</p> <p>16 BY MR. MOXLEY:</p> <p>17 A. Again, J&J and the parent would</p> <p>18 need to evaluate all of the local</p> <p>19 requirements and rules. What does it mean to</p> <p>20 capitalize the entity? Are there abilities</p> <p>21 to abstract value out of that entity?</p> <p>22 Again, we would need to evaluate a</p> <p>23 multitude of factors before ever making that</p> <p>24 decision.</p> <p>25 Q. I understand that, Mr. Lisman. My</p>	<p style="text-align: right;">Page 104</p> <p>1 A. LISMAN</p> <p>2 and J&J evaluated all the things that I</p> <p>3 mentioned, including external factors, I'm</p> <p>4 not aware of anything that would prevent</p> <p>5 that, no, besides what I just said.</p> <p>6 Q. How was the dividend upstreamed to</p> <p>7 Apsis?</p> <p>8 A. How? How was it upstreamed?</p> <p>9 Q. Yes, sir.</p> <p>10 MR. STARNER: Objection.</p> <p>11 You are talking about --</p> <p>12 objection.</p> <p>13 A little unclear on what you're</p> <p>14 asking about, Mr. Moxley.</p> <p>15 MR. MOXLEY: Yeah, sure. Let me</p> <p>16 clarify.</p> <p>17 BY MR. MOXLEY:</p> <p>18 Q. Mr. Lisman, the GH Biotech made --</p> <p>19 let me make sure I have it correct.</p> <p>20 GH Biotech made a \$1.8 billion</p> <p>21 dividend that is -- to Apsis; is that</p> <p>22 correct?</p> <p>23 A. From what I understand, yes.</p> <p>24 Q. Okay. How did it do that?</p> <p>25 A. So as a general matter, when</p>

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1 A. LISMAN
2 dividends are declared, the paying entity
3 needs to, A, have adequate local reserves to
4 make that happen. They would need to
5 evaluate are there local tax costs of that,
6 and make sure those are accounted for.
7 And then that dividend then would
8 be declared and then paid up the chain to the
9 next entity in the chain. So it would be
10 paid up.
11 Q. Okay. And so then was it
12 upstreamed to Apsis through the Janssen and
13 the Janssen France Treasury Unlimited?
14 A. I don't have the org chart in
15 front of me, but if we had the -- we have an
16 org chart, dividends must pass through each
17 individual entity. So you can't just skip
18 entities in the chain. You need to pass
19 through each ownership's structure.
20 So, off the top of my head, I
21 don't recall if there was an entity or two in
22 the middle, but if there was, the process
23 that I just described would be the same for
24 all of them.
25 MR. STARNER: Would it be

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1 A. LISMAN
2 helpful to look at the org chart?
3 MR. MOXLEY: Yeah, I was going
4 to -- I was actually just going to
5 call it up, Mr. Starnar.
6 Let's bring up tab 7, if we
7 could, and let's mark that as our next
8 exhibit.
9 (Whereupon, Lisman Exhibit 7,
10 LTLMGMT-00013207 was marked for
11 identification as of this date by the
12 Reporter.)
13 MR. STARNER: Mr. Lisman, if you
14 want to use the org chart you have,
15 feel free to. Mr. Moxley has a copy
16 of that also.
17 THE WITNESS: This should be
18 fine.
19 BY MR. MOXLEY:
20 Q. Okay. Can you see this? And we
21 can zoom in as we need to, Mr. Lisman.
22 But let me ask this question,
23 you've seen this document before, yeah?
24 A. I have, yes.
25 Q. Okay. And is this one of the

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1 A. LISMAN
2 documents that you reviewed in preparing for
3 today?
4 A. It is, yes.
5 Q. Is it one of the documents that
6 was sent over to us in the collection of
7 materials that you had sent to Mr. Starnar?
8 A. It is. I just colored in some of
9 the boxes, but, yes.
10 Q. Okay. Okay. Which boxes did you
11 color in? I don't have --
12 A. I colored in boxes where there was
13 value over \$100 million in, so I knew where
14 the value was in the org chart.
15 Q. I see. Give me one second.
16 We're going to talk about this
17 exhibit, Mr. Lisman, for a minute. We'll
18 take some steps to bring your document up on
19 the screen so we can --
20 A. Sure.
21 Q. -- see the color coding you did.
22 MR. MOXLEY: So if we could just
23 zoom in.
24 And, Aydaline, I'll appreciate
25 your help, if you could, with this.

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1 A. LISMAN
2 Can we just zoom in on that center
3 column there, the one that's the
4 tallest in the middle of the chart.
5 There we go. That's great.
6 BY MR. MOXLEY:
7 Q. Okay. So just to orient
8 ourselves, then, Mr. Lisman, you see that the
9 very top box there, "Johnson & Johnson (New
10 Jersey)," that's your employer, correct?
11 A. My actual employer, I believe, is
12 Johnson & Johnson Services, Inc., is the name
13 of my actual employer.
14 Q. Oh, okay. Okay, okay.
15 So the Johnson & Johnson at the
16 top of this org chart, that's the ultimate
17 parent company, correct?
18 A. I don't know if that's the
19 ultimate parent or if there is another one
20 above it, if you look at another macro view
21 of the J&J org chart. This is a piece of the
22 pie.
23 Q. Okay. Going down four boxes, you
24 see, "Johnson & Johnson Holdco (NA) Inc."
25 Do you see that?

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1 **A. LISMAN**
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 **Did I read those sentences**
12 **correctly, Mr. Lisman?**
13 A. Yes, you did.
14 **Q. Okay. Do you know if Apsis sought**
15 **those approvals with respect to the**
16 **\$1.8 billion dividend?**
17 A. I do not know if they sought
18 approvals.
19 But, to clarify, this is talking
20 about borrowing limits which is different
21 than dividends.
22 **Q. Right. Understood. Let me ask a**
23 **slightly different question, then.**
24 **I believe your testimony was that**
25 **the reason the dividend was "stuck," as you**

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1 **A. LISMAN**
2 **put it, at Apsis, was because of Apsis'**
3 **inadequate reserves under applicable law to**
4 **it to make the dividend; is that correct?**
5 A. Correct.
6 **Q. Okay. And so Apsis finds itself**
7 **in a position where it doesn't have adequate**
8 **reserves, and it also, I take it, under this**
9 **policy, can't borrow without seeking proper**
10 **approvals, correct?**
11 A. I don't know if Apsis seeks
12 ability to borrow, but I would say that the
13 concept of not having reserves available
14 would not be impacted on a calculation basis,
15 even if they did go borrow.
16 So it's an important accounting
17 equation under GAAP to understand how these
18 things are actually calculated. One being
19 assets minus liabilities equals equity or
20 reserves.
21 Even if Apsis did go borrow and
22 they took out cash as an asset, that would be
23 a payable or a loan, a liability, the math
24 would be the same.
25 **Q. Okay. It's the case that Johnson**

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1 **A. LISMAN**
2 **& Johnson affiliates can borrow money from**
3 **J&J's in-house bank, correct?**
4 A. The J&J in-house bank is one of
5 the vehicles that J&J affiliates can borrow,
6 yes.
7 **Q. Okay. HoldCo, as a J&J affiliate,**
8 **would be able to access the various**
9 **intercompany funding arrangements within**
10 **J&J's corporate structure as well, correct?**
11 A. HoldCo is part of J&J's structure,
12 so all of the policies, procedures, controls
13 are open to them, yes.
14 **Q. Okay. So we talked a little bit**
15 **before about how there was a time when HoldCo**
16 **was referred to as new JJCI.**
17 **Are you familiar with that?**
18 A. Yes.
19 **Q. Okay. So when new JJCI, at the**
20 **time that it was called that, or HoldCo, at**
21 **the time that it's called that, when that**
22 **entity made payments, where did that cash**
23 **come from?**
24 A. When JJCI made payments, where did
25 the cash come from? Just to make it clear.

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1 **A. LISMAN**
2 **Q. That's right, that's the question.**
3 A. So previous -- so are we talking
4 about after the bankruptcy filing or before
5 or during? Can we just clarify dates?
6 **Q. Sure. There was a period -- let's**
7 **say in April, right before the first**
8 **bankruptcy was dismissed, where would the**
9 **cash come from then?**
10 A. So HoldCo, from what I understand,
11 had access to or had a claim to cash with the
12 J&J bank. I think on one of the previous
13 slides we saw HoldCo's listed assets. There
14 was a number there for cash. I think the
15 number was 400, right. That would be
16 HoldCo's claim to cash against the J&J bank
17 at the time.
18 So if HoldCo needed to pay a bill,
19 right, it would draw down or it would use
20 that claim to cash against J&J, the parent,
21 up until the 400,000 on the page.
22 **Q. Does that change -- does what you**
23 **just described there, does that change in**
24 **terms of the mechanics, after the April 4th**
25 **dismissal and before the second bankruptcy**